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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 00 115 53058 Office: CALIFORNIA SERVICE CENTER

Date: 07 JAN 2002

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Myra L. Rosenberg

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the immigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a California restaurant that seeks to employ the beneficiary as its assistant manager and, therefore, endeavors to classify the beneficiary as a multinational manager or executive pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director denied the petition because the petitioner failed to establish that the beneficiary was employed by the overseas entity in a managerial or executive capacity for at least one year in the three years immediately preceding her entry into the United States in a nonimmigrant status. On appeal, counsel submits a brief. Counsel states, in part, that the beneficiary was employed by the overseas entity in a primarily managerial capacity because she managed an essential function of the overseas entity's operations.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

* * *

(C) Certain Multinational Executives and Managers. -- An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

The petitioner seeks the services of the beneficiary as a multinational manager, not as a multinational executive. In her denial letter, the director stated that the beneficiary's job description indicated that the beneficiary, not other employees, performed the day-to-day functions of the overseas entity, and that her overall duties were not primarily managerial in nature.

On appeal, counsel states that the beneficiary served as the manager of an essential function in her position as the assistant manager of the food import department. Counsel notes that the petitioner's job description for the beneficiary indicated that

the beneficiary supervised the import of foodstuffs, supervised and controlled the work of two assistants, and managed the import of food and food products. Specifically, counsel notes that the beneficiary was responsible for the following job duties:

- Negotiating transportation rates
- Establishing sources of supply
- Developing and maintaining a system to track shipments and deliveries
- Verifying product quality
- Directing the purchase of food products and general merchandise
- Projecting cost increases and cash flow needs for the department and
- Verifying the creditworthiness of suppliers

Counsel also contends that the beneficiary operated at a senior level within the organizational hierarchy and exercised control over the day-to-day operations.

Based upon a review of the beneficiary's overall job description and her detailed job duties, the Service is not persuaded that the beneficiary's position with the overseas entity was primarily managerial.

In order to be found eligible for this immigrant visa classification as a manager, the record must clearly show that the beneficiary *primarily*:

- (A) Manages the organization, or a department, subdivision, function, or component of the organization;
- (B) Supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (C) If another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (D) Exercises direction over the day-to-day operations of the activity or function for which the employee has authority.

See. 8 C.F.R. 204.5(j)(2).

The petitioner submitted an organizational chart for [REDACTED] Inc., which is the parent company of the petitioner. This organizational chart, which detailed the beneficiary's role with the petitioning entity, did not detail the beneficiary's role with the overseas entity. Therefore, the Service is unable to determine the beneficiary's position within the organizational hierarchy of the overseas entity.

The beneficiary's position within the company's organizational structure is important in a determination of whether the position that the beneficiary held was primarily managerial, as counsel claims. The beneficiary's position title was "assistant" manager, which indicates that she worked under the direction of a manager; however, the petitioner does not provide any information about the job duties of the manager of the food import department and contrast the job responsibilities of the manager with the job responsibilities of the beneficiary. The record does not provide a clear explanation of how the beneficiary could be responsible for managing the food import department, as counsel states; yet, only be employed in an assistant role. Without further information about the overseas entity's organizational structure and the job duties of all employees in the food import department, the director's decision cannot be overturned. As the record is presently constituted, there is no evidence to indicate that the beneficiary managed an essential function of the overseas entity's operations.

Beyond the decision of the director, the record also does not support a finding that the beneficiary is currently employed and would continue to be employed in a primarily managerial capacity. The beneficiary's current title is assistant general manager; however, the petitioner does not submit a job description for the general manager's position in order to clarify the delineation of duties between the general manager and assistant general manager positions. It does not appear plausible that an individual with the title of assistant general manager would have the "ultimate authority" over all personnel decisions in the company as the petitioner claims, or would have "management authority" over the management and administration of all divisions of the company. However, as the appeal will be dismissed on another ground, this issue will not be explored further.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.